

Factor a: **The existence of any special circumstances or needs of the child.**¹

Interpretation:

In examining this factor, both the emotional and physical needs of the child must be considered. The fact that a child was emotionally sensitive, and the possibility that the father's belated involvement might traumatize the child, was an appropriate consideration in denying any parenting time to the father.² And, when the children suffered from an illness that caused them to be underweight, hyperactive, allergic, and to have an abnormal disease immunity, the court was required to recognize the health needs of the children in fashioning a parenting time schedule.³

When addressing this factor, any special circumstances that may impact parenting time must be considered. For example, a court erred when it did not determine before entering a parenting time order whether a child with cerebral palsy was able to cope with a dual custody environment.⁴

Considerations for the Investigator:

- What emotional impact will the parenting time have on the child?
- How long has it been since the child spent significant time with the parent?
- Does the parent have the ability to accommodate the special needs of the child during parenting time?
- Does the parent have the inclination to accommodate the special needs?

¹ MCL 722.27a(6)(a).

² *Stevenson v Stevenson*, 74 Mich App 656 (1977).

³ *Lorenz v Lorenz*, 70 Mich App 356 (1976).

⁴ *Stevens v Stevens*, 86 Mich App 258 (1978) (Whether a child with cerebral palsy is able to cope with dual custody environment.). See also Michigan Parenting Time Guideline for suggestions concerning a child's medical needs, age issues, extracurricular activities, and safety issues.

- Are there any remedial needs of the child and is the parent prepared to assist the child with these needs?
- Is the parent aware of any medications the child is receiving and does the parent know when those medications are to be taken?

Practice Tips: It is necessary to determine if the parent is attuned sufficiently to the children's needs (both physical and emotional). This would include whether the parent's home is adequately equipped for the needs of the child. It may also be necessary to consider agency, third party, or therapeutic parenting time. Therapeutic parenting time provides for a gradual establishment of a relationship between the child and the parent with the goal of moving towards a more standard form of parenting time.

Factor b:

Whether the child is a nursing child less than 6 months of age, or less than 1 year of age if the child receives substantial nutrition through nursing.¹

Interpretation:

Currently, no published cases address this factor. The following should be considered for a child who is very young or nursing.

Considerations for the Investigator:

- What is the age of the child?
- Does the child have special needs as a result of its infancy and is the parent aware of these needs?
- Does the parent have the inclination necessary to provide for these needs?
- Does the parent have the ability to provide for the child's needs?
- What is the nursing schedule of the child?
- Can the child's nutritional needs be met if a parenting time schedule is implemented?
- Can the child's nutritional needs be met by means other than nursing (e.g., the use of formula)?
- Can the mother's milk be provided for the child during parenting time?
- Can parenting time be arranged around the child's nursing schedule?

Practice Tip: It is necessary to determine what impact, the child's age and nursing of the child will have on parenting time.

¹ MCL 722.27a(6)(b).

Factor c:

The reasonable likelihood of abuse or neglect of the child during parenting time.¹

Interpretation:

MCL 722.27a(3) states: “A child has a right to parenting time with a parent unless it is shown on the record by clear and convincing evidence that it would endanger the child's physical, mental, or emotional health.” This parenting time factor examines possible physical, emotional, or psychological abuse of the child by the non-custodial parent or third parties during parenting time.

MCL 722.27a(8)(c) allows the court to place restrictions on the presence of third persons during parenting time. The court may place other conditions on parenting time necessary to protect a child. Therefore it was reasonable for the court to restrict parenting time to five hours every other Saturday afternoon and to forbid the use of alcohol or cursing in the non-custodial parent’s home during parenting time.² Supervised parenting time is proper if there is evidence of physical abuse or excessive physical discipline³ by the parent or a third party who is present during parenting time.

Considerations for the Investigator:

- Are there indications that an act of physical violence was ever committed by the parent against any individual?
- Are there any indications the parent ever physically abused the child?
- Is information available that indicates the parent verbally, mentally, or emotionally abused (e.g., tormented, berated, or threatened) the child, another family member, including live-in relationships, or stepchildren?

¹ MCL 722.27a(6)(c).

² *Van Koevering v Van Koevering*, 144 Mich App 404 (1985) (The children described the mother’s home as a place where those present drank, cursed, and smoked marijuana, and where a drunken man once crawled into the daughter’s bed.).

³ *Booth v Booth*, 194 Mich App 284 (1992).

- Has there ever been a personal protection order issued against the parent?
- Has child protective services ever investigated the parent for child abuse or neglect?
- Has the parent left the child unattended for extended periods of time?
- Has the child been properly feed and clothed?
- Are there indications the parent failed to provide a safe environment for the child?
- Has the parent allowed another individual to threaten or abuse the child?
- Has a third party who is present during parenting time ever been investigated for child abuse or neglect?
- Has a third party who is present during parenting time ever been convicted of a violent crime?
- Has the parent berated or threatened the other parent in the presence of the child during parenting time?
- Can parenting time be ordered that would eliminate any risks of the child being abused?
- Should there be supervised parenting time?

Practice Tips: Are there indications of threats to the child's safety during parenting time? If the child's safety is a consideration, determine what safeguards must be in place to protect the child. The Michigan Judicial Institute, Friend of the Court Domestic Violence Resource Book addresses parenting time and child abuse.

Factor d:

The reasonable likelihood of abuse of a parent resulting from the exercise of parenting time.¹

Interpretation:

This factor concerns the risk that either parent could suffer some form of abuse when parenting time is exercised. Thus it was appropriate that the parenting time schedule require twelve hours advance notice of the exercise of parenting time when the relationship between the parents was replete with animosity and strife.² Michigan statutes provide for alternative parenting time arrangements to guard against such abuse.³ The Michigan Parenting Time Guideline provides suggestions concerning arrangements when abuse is present in a case.

Considerations for the Investigator:

- Does either parent insult or berate the other parent during parenting time?
- Does either parent threaten the other parent during parenting time?
- Does either parent emotionally or psychologically abuse the other parent during parenting time?
- Has there been a history of conflicts between the parents during the parenting time?
- Is there evidence that an act of physical violence was committed by either parent towards the other?
- Has either parent been prosecuted or convicted of a violent crime?
- Has a third party insulted or berated one of the parents during parenting time?

¹ MCL 722.27a(6)(d).

² *Thames v Thames*, 191 Mich App 299 (1991) (Where the mother attributed breakdown of marriage to abuse by the father among other reasons.).

³ MCL 722.27a(8)(f) and MCL 722.27a(8)(c).

- Has a third party threatened one of the parents parent during parenting time?
- Is it possible for the parents to exchange the child in a manner that would eliminate any possibility of abuse (exchange the child in a public place)?

Practice Tips: Are there legitimate concerns for the safety of either parent during parenting time? It is necessary to identify if contact between the parents poses a threat to either person. If so, then safeguards should be put in place that would protect both parents from harm.

Factor e:

The inconvenience to, and burdensome impact or effect on, the child traveling for purposes of parenting time.¹

Interpretation:

This factor considers the impact traveling will have on the child. For example, under this factor it was considered error not to consider the impact that a parenting time scheme involving travel between Nebraska and Michigan would have upon the health of the children.²

Considerations for the Investigator:

- Will traveling between the parent's homes have an impact on the child's health?
- Is the age of the child appropriate for amount and means of travel required for parenting time?
- If the parent cannot transport the child, can someone who the child feels comfortable with transport the child?
- Does the child have special needs that must be considered for transportation purposes?
- Would the means of transportation for parenting time cause the child anxiety or stress(e.g., airplane, bus, train)?

Practice Tips: For purposes of parenting time, this factor examines impact traveling will have on the child. Try to identify difficulties the child may have when traveling between the parent's homes and how parenting time can be structured to eliminate those difficulties.

¹ MCL 722. 27a(6)(e).

² *Lorenz v Lorenz*, 70 Mich App 356 (1976).

Factor f: **Whether a parent can reasonably be expected to exercise parenting time in accordance with the court order.¹**

Interpretation:

This factor examines whether the proposed parenting time order is reasonable under the circumstances. When the circumstances indicate that a parent might not comply with the order, the court may impose conditions to ensure compliance. For example, the court may include a provision that one parent not tell the children what to say to the other parent during parenting time.² The parenting time schedule also should be one the parent can reasonably comply with. Consequently, the court has found that it was necessary to require parenting time during the Sabbath day of the children's religion because other options would disrupt the father's work schedule.³

Considerations for the Investigator:

- What circumstances have changed that prevents the parent from exercising parenting time (e.g., new job, health conditions, second family)?
- Is the child significantly older since the entry or modification of the court order for parenting time?
- Is the child involved with more school and extracurricular activities now than when the order was entered or modified?
- Does the child make plans that interfere with parenting time?
- Has the parent been late when picking up or dropping off the child?
- Has the parent ever withheld the child from the other parent?
- Has the parent ever been charged with parental kidnapping?

¹ MCL 722. 27a(6)(f).

² *Van Koevering v Van Koevering*, 144 Mich App 404 (1985).

³ *Deal v Deal*, 197 Mich App 739 (1993).

Practice Tips: It may be necessary to determine if circumstances have changed that make it impossible for the parent to spend time with the child. It may also be necessary to determine if it is likely the parent will obey the court order.

Factor g: **Whether a parent has frequently failed to exercise reasonable parenting time.¹**

Interpretation:

This factor reviews how consistent a parent has been in exercising the court ordered parenting time. For example, parenting time for the non-custodial parent would be inappropriate where the request was made after a period of abandonment of the child and in response to recent attempts to collect child support.² Likewise, when the parents did not exercise their previous parenting time rights with any regularity, the court could conclude that the parents were not entirely earnest in their desire to modify the court's custody, parenting time, and support orders.³

Considerations for the Investigator:

- Are there indications that the parent has failed to spend time with the child as ordered by the court, or as agreed to by the parents?
- Has the parent routinely contacted the child at the last minute to cancel plans?
- Has the parent gone long periods with no attempts to contact the child?
- Does the parent routinely invests time in hobbies, interests, or adult friends over spending time with the child?
- Does the parent raise parenting time issues, only during child support enforcement proceedings?
- Is there any indication the parent has interfered with the other parent's time with the child?
- How much time does the parent actually spend with the child?
- Is there an over-reliance on the use of a child care provider or third party to watch the child?

¹ MCL 722. 27a(6)(g).

² *Stevenson v Stevenson*, 74 Mich App 656 (1977).

³ *Lorenz v Lorenz*, 70 Mich App 356 (1976).

Practice Tips: Try to identify how consistent the parent has been in spending time with the child. It is critical that you distinguish unexercised parenting time oppose to situations where parenting time was denied.

Factor h:

The threatened or actual detention of the child with the intent to retain or conceal the child from the other parent or from a third person who has legal custody. A custodial parent's temporary residence with the child in a domestic violence shelter shall not be construed as evidence of the custodial parent's intent to retain or conceal the child from the other parent. ¹

Interpretation:

The court must examine the likelihood that the child will be improperly detained, and order reasonable conditions on parenting time. For example, it was appropriate for a court to impose restrictions on parenting time of a resident of Ireland that included surrender of the father's passport and a bonding requirement.² When the threat of a violation has passed, continued restrictions may not be necessary. For example, the court properly reviewed and rejected an attempt to prevent parenting time for a parent who had previously detained the child when that parent had subsequently fully abided by the court orders regarding custody and parenting time for approximately two years.³

Considerations for the Investigator:

- Has the parent ever concealed the child from the other parent?
- Has the parent ever been charged with parental kidnapping?
- Has the parent ever abducted the child from the other parent's home, the child's school, or child care providers?
- Has the parent ever made threats to take the child to another state or country and not return?
- Does the parent refuse to provide the other parent with information regarding vacation plans (e.g., location, dates, phone numbers, and address)?

¹ MCL 722.27a(6)(h).

² *Farrell v Farrell*, 133 Mich App 502 (1984).

³ *Mauro v Mauro*, 196 Mich App 1 (1992).

Practice Tip: It is necessary to determine if the parent has any history of concealing the child from the other parent. Try to look for examples of the parent reluctance to return the child or statements made that indicate a legitimate threat.

Factor i: **Any other relevant factors.¹**

Interpretation:

This factor examines any other issues that were not addressed in the previous eight parenting time factors of the Child Custody Act. Among the circumstances that may be considered are the disruption to the child's stable home environment² and the children's need to have more time with their father (which could outweigh the fact that the parenting time would occur during the Sabbath day of the children's religion).³

Considerations for the Investigator:

- Should parenting time be structured so the child has consistent contact with siblings and step siblings?
- Is the child involved with community and school activities that may interfere with parenting time?
- Is each parent able to discuss the parenting time schedule with the other parent?
- Does the parent have the opportunity to spend time with the child (e.g., afford transportation, money for activities)?
- Is the parent likely to exercise parenting time if the court ordered it?
- Is there any other issue that has not been addressed that may interfere with the parent spending time with the child?

¹ MCL 722.27a(6)(i).

² *Stevenson v Stevenson*, 74 Mich App 656 (1977).

³ *Deal v Deal*, 197 Mich App 739 (1993) (Although a psychiatrist testified that it was preferable to have the children stay with the mother during the Sabbath, he admitted that the failure to do so would not result in harm to the children. Sunday only parenting time would not have provided enough time for the children to stay with the father, and allowing the children to stay until Monday would disrupt their schooling and the father's work schedule.).

Practice Tip: Look for issues that are unique to this family that may not have been previously addressed that the court should be aware of before making a parenting time decision.